

Constitution.

On May 17, 2023, Defendants filed a motion to dismiss Plaintiff's amended complaint for failure to state a claim [ECF No. 31]. Instead of filing a brief in opposition to Defendants' motion, Plaintiff filed a supplement to his amended complaint, asserting additional allegations in support of his claims [ECF No. 36].

On September 12, 2023, Chief Magistrate Judge Lanzillo issued a Report and Recommendation ("R&R") [ECF No. 37] recommending that Defendants' motion be granted in part and denied in part, as follows: (1) the motion should be granted as to Plaintiff's Fourteenth Amendment due process claim, and such claim should be dismissed with prejudice, because it is more specifically covered by Plaintiff's Eighth Amendment claim; (2) the motion should be denied as to Plaintiff's Eighth Amendment claim against Defendants Arnold, Froehlich, and Jadlocki; and (3) the motion should be granted as to Plaintiff's Eighth Amendment claim against all Defendants other than Arnold, Froehlich, and Jadlocki, for their lack of personal involvement in the alleged misconduct, without prejudice to Plaintiff's right to file an amended complaint to state the personal involvement, if any, of each such Defendant. No timely objections to the R&R have been filed.

After *de novo* review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 16th day of October, 2023;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 31] is granted in part and denied in part, as follows:

1. Defendants' motion is GRANTED as to Plaintiff's Fourteenth Amendment claim against all Defendants, and such claim is DISMISSED

with prejudice;

2. Defendants' motion is DENIED as to Plaintiff's Eighth Amendment claim against Defendants Arnold, Froehlich, and Jadlocki, and such claim shall be allowed to proceed beyond the pleading stage; and

3. Defendants' motion is GRANTED as to Plaintiff's Eighth Amendment claim against all Defendants other than Defendants Arnold, Froehlich, and Jadlocki, and said claim shall be DISMISSED against all such Defendants, without prejudice to Plaintiff's right to amend his complaint to allege with specificity the personal involvement of each such Defendant. Any such amendment shall be filed by Plaintiff **within thirty (30) days of this Order**. In the event Plaintiff fails to file an amendment within such time, he must file with the Court a motion seeking leave to file an amendment with an attached copy of the proposed amendment he seeks to file. If no amendment is filed or requested by the end of discovery in this case, the dismissal of Plaintiff's Eighth Amendment claim against any Defendant other than Defendants Arnold, Froehlich, and Jadlocki, will be converted to a dismissal with prejudice, without further notice of the Court.

The report and recommendation of Chief Magistrate Judge Lanzillo, issued September 12, 2023

[ECF No. 37], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge

all parties of record